IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.519 OF 2001

DIST. KOLHAPUR

1. Sambaji Bapu Shinde,)
2. Tanaji Bapu Shinde)
3. Krishnat Bhimrao Shinde)
4. Baburao Bapu Shinde)

all R/o. Village Kakhe, Tal.)

Panhada, District Kolhapur.) ... Appellants/Accused

Versus

1. The State of Maharashtra)
2. Rajashri Satavekar, at Post Kakhe,)

Tal. Panhada, Dist. Kolhapur.) ... Respondents

Mr. P.P. Hudlikar for the appellants- accused.

Dr. F.R. Shaikh, A.P.P. for the respondent- State.

CORAM : SMT. RANJANA DESAI & D.G. KARNIK, JJ.

DATE ON WHICH THE JUDGMENT RESERVED : 18TH APRIL, 2006.

DATE ON WHICH THE JUDGMENT PRONOUNCED : 24TH APRIL, 2006.

JUDGMENT : (Per Smt. Ranjana Desai, J.)

1. Appellants 1 to 4 (for short, "A-1, A-2. A-3 and A-4") respectively were tried in the Court of Sessions Judge, Kolhapur at Kolhapur in Sessions Case No.83 of 2000 for offences punishable under section 302 read with section 34 of the Indian Penal Code (for short, "the IPC") . By the judgment and order dated 14/6/2001, the learned Sessions Judge convicted A-1 to A-4 of the offence punishable under section 302 read with section 34 of the IPC and sentenced them to suffer rigorous imprisonment for life and to pay a fine of Rs.1,000/- each, in default, to undergo further rigorous imprisonment for three months. The said judgment and order is challenged in this appeal.

2. It would be advantageous to give a gist of the prosecution case. Deceased Sadashiv Kundalik Satavekar, his wife PW-2 Rajashri and their children Pravin and Suraj lived in village Kakhe in their house on the main road. PW-8 Mahadev is the elder brother of deceased Sadashiv. He also lived in a house adjoining the house of the deceased. PW-10 Sunita and her mother-in-law PW-9 Asha lived in a

house in the by-lane which passes by the side of the deceased's house. PW-6 Sambhaji has a cycle shop on the main road in the said village. A-1, A-2 and A-4 are the brothers and A-3 is their cousin. They also belong to village Kakhe. Village Kakhe is about 3 k.m. away from Kodoli, which is a bigger village. Weekly bazar is held on every Thursday in village Kodoli. Villagers from Kakhe go to village Kodoli on the weekly bazar day for shopping. Cycle shop of A-2 is on the main road. Cycle shop of PW-6 Sambhaji, son of PW-3 Shivaji is at a distance of 150 ft. towards North from the `T' joint formed by the meeting of South-North main road with the East-West road leading to village Mangale. At a distance of more than 200 ft. from the cycle shop of PW-6 Sambhaji, there is one STD booth. The house of the deceased is at a distance of about 500 ft. from the said STD booth. There is a grocery shop on the North side of the STD booth and there is a 3 ft. wide by-lane meeting the main road.

3. According to the prosecution, the open space in front of the house of the deceased and his brother PW-8 Mahadev was given by the two brothers to A-2 for his cycle shop about three years prior to the incident. A-2 cast aspersions on the character of PW-2 Rajashri saying that she has illicit relations with other persons. She complained about it to the deceased who, in turn, conveyed this to his brother PW-8 Mahadev. On that count, there was a quarrel

between PW-8 Mahadev and the deceased on the one hand and A-2 on the other hand. The deceased asked A-2 to shift his cycle shop from the open space. Because of this, A-2 was annoyed.

4. About a week prior to the incident in question, A-1 was driving his motor cycle on the main road. He dashed it against Suraj, the son of the deceased. Suraj sustained minor injuries. The deceased caught the collar of A-1 and slapped him. The persons who had gathered there separated the two. According to the prosecution, on that day, A-1 threated the deceased that he will kill him.

5. On 25/11/1999, in the afternoon, the deceased and PW-2 Rajashri had gone to Kodoli for weekly bazar. They made their purchases at the bazar. At about 3.30 p.m., they returned to village Kakhe in the jeep of Pandurang Shinde. They got down near the S.T. stand at village Kakhe. They started walking down the road. At that time, PW-3 Shivaji, who has a cycle shop on the said road called the deceased for chewing tobacco. PW-4 Balasaheb was also there. The deceased went to them. PW-2 Rajashri waited for the deceased. After sometime, the deceased came to her. She started walking ahead. The deceased was following her. After sometime, she heard the shouts. She turned back. She saw the accused beating the deceased with weapons and sticks. She went there. The accused ran away.

She saw that her husband was dead. She sat near the body of the deceased. PW-8 Mahadev was informed about the incident by the driver of Baburao Patil. PW-8 Mahadev rushed to the scene of offence. He saw the deceased lying in a pool of blood. PW-14 HC Ismail Patel was on duty at Kodoli Police Station, at the relevant time. At about 4.40 p.m., Baburao Patil, the Chairman of the Village Co-operative Society of Kakhe telephoned him and told him that Sadashiv is dead. PW-14 HC Ismail Patel made the relevant station diary entry, which is at Ex-49. At 4.45 p.m., he despatched a team of three police constables to Kakhe village in a police jeep. At 5.00 p.m. a message was sent to Kodoli Police Station from the scene of offence that in fact Sadashiv was murdered and that his wife would be brought to the police station for lodging the complaint. PW-14 HC Ismail Patel entered the said message in the station diary. This entry is at Ex-51. PW-2 Rajashri and PW-8 Mahadev were brought to the Kodoli Police Station. PW-2 Rajashri's complaint was recorded by PW-14 HC Ismail Patel. It is at Ex-17. On the basis of this complaint, investigation was started. A-2, A-3 and A-4 were arrested on 26/11/1999. A-1 was traced on 1/12/1999. He was put under arrest. After completion of the investigation, the accused were charged as aforesaid.

6. In support of its case, the prosecution examined as many as 17

witnesses. The star witness of the prosecution is PW-2 Rajashri. The prosecution also examined PW-8 Mahadev, the brother of the deceased. Most of the witnesses examined to prove the occurrence turned hostile. PW-12 Dr. Shrikant proved the post-mortem notes. Details of investigation were given by PW-14 HC Ismail Patel, PW-15 PC Sudhakar Bhosale, PW-16 PI Bhivaji and PW-17 PC Ashok Potdar who were attached to the Kodoli Police Station.

7. The defence of the accused was one of denial. They claimed to be innocent. According to them, they were falsely implicated. After perusing the evidence on record, the learned Sessions Judge convicted and sentenced the accused as aforesaid. Hence, this appeal.

8. We have heard, at some length, Mr. Hudlikar, the learned counsel appearing for the appellants-accused and Dr. Shaikh, the learned A.P.P. for the State. With the assistance of the learned counsel, we have gone through the evidence and the record of the case.

9. PW-12 Dr. Shrikant, who was at the relevant time, attached to the Rural Hospital, Kodoli had done the post-mortem on the deceased. PW-12 Dr. Shrikant found following six external injuries

on the body of the deceased.

"1. Incised wound on left side of neck upper 1/3 transverse from thyroid cartilage to nape of neck 14 x 4 x 6 cms bleeding plus with dislocation cervical verte-bra with cervical spinal cord cut at injury site. All muscles cut in same place with carotid artery bleeding of face.

2. Incised wound on left side of neck below 1st injury transverse 9 x 2 x 6 cms slight bleeding upto cervical spine, spine broken and dislocated. All structures cut in same place - bleeding.

3. Abrasion on thyroid cartilage left side 3 x . 2 x .2 cm. transverse.

4. Vertical incised wound on head joint just above left ear over temporal region 6 x 1 x 1 cms bone-deep visible exposed bone seen with irrosion in same place bleeding plus.

5. Incised wound behind left parietal eguinance transverse and curved 6 x .5 x .3 cm

skin flap raised bleeding plus.

6. Abrasion transverse on left upper limb below left shoulder joint 6 x .4 cm superficial."

PW-12 Dr. Shrikant opined that all the injuries were ante-mortem. The cause of death was stated by PW-12 Dr. Shrikant as "death due to hemorrhagic shock secondary to multiple incised deep wounds on neck and head with transection of spinal cord at cervical region". When weapons of assault allegedly discovered at the instance of the accused were shown to him in the court, PW-12 Dr. Shrikant stated that the injuries sustained by the deceased were possible by them.

10. As regards the incident in question, the prosecution examined PW-2 Rajashri, PW-3 Shivaji, PW-4 Balasaheb, PW-5 Dadasaheb, PW-6 Sambhaji, PW-7 Housabai, PW-8 Mahadev, PW-9 Asha, PW-10 Sunita and PW-11 Prakash. Out of these witnesses, PW-2 Rajashri has supported the prosecution case fully. PW-8 Mahadev also supported the prosecution case. PW-10 Sunita's evidence supports PW-2 Rajashri's evidence to a great extent. PW-3 Shivaji, PW-4 Balasaheb, PW-5 Dadasaheb, PW-6 Sambhaji, PW-7 Housabai, PW-9

Asha, PW-11 Prakash did not support the prosecution case. They turned hostile.

11. PW-2 Rajashri has stated that the open space in front of her house was given by her brother-in-law PW-8 Mahadev to A-2 for running a cycle shop. A-2 had cast aspersions on her character. She had informed this fact to the deceased. The deceased informed PW-8 Mahadev about it. Therefore, there was a quarrel between A-2 on the one hand and the deceased and PW-8 Mahadev on the other hand. The deceased asked A-2 to shift his cycle shop. Accordingly A-2 shifted from the site. Because of this, he was angry. Other accused were also annoyed. According to PW-2 Rajashri, a week prior to the incident, A-1 had dashed his motor cycle against his son Suraj. Suraj had sustained minor injuries. On that day, the deceased had slapped A-1 and A-1 had threatened the deceased that he will kill him. Eight days thereafter i.e. on 15/11/1999, she had gone with the deceased to Kodoli in the afternoon for weekly bazar. They made purchases at the bazar. They came to village Kakhe in the jeep of Pandurang Shinde at about 3.00/3.30 p.m. They got down near the S.T. stand at Kakhe. They started walking towards their house. The said road leads from S.T. stand to the village. PW-3 Shivaji has a cycle shop on that road. When they came in front of the cycle shop, PW-3 Shivaji called the deceased for chewing tobacco. The deceased

went to him. According to PW-2 Rajashri, she went a little ahead and waited for the deceased. The deceased was accompanied by Balu Patil. After 10 minutes, the deceased came to her. She started walking ahead. The deceased was following her. She walked about 50 to 60 paces and she heard the words “Randechya, Gavale Aahe, Hana mara” [He is now caught. He should be beaten up.] Thereafter, she turned around. She saw A-2 was hitting the deceased on his head with an axe. He hit the deceased two to three times on his head. A-1 hit the deceased on his neck with a koyta. The deceased fell down. A-3 and A-4 started beating the deceased with sticks. She went there screaming. People had gathered there. She saw that her husband was dead. She started weeping. At that time, her brother-in-law PW-8 Mahadev came there. Thereafter, they went to the Kodoli Police Station. At the police station, she lodged the complaint, which is at Ex-17. When article 14 (axe) was shown to her in the court, she stated that it is the same axe which was used by A-2. She stated that koyta (article 21) was with A-1. She stated that A-3 and A-4 had sticks in their hands. When two sticks were shown to her, she honestly stated that she would not be able to say as to which of the sticks was in the hands of which accused.

12. We have carefully read the evidence of this witness. In our opinion, her evidence inspires confidence. PW-2 Rajashri being the

wife of the deceased will not involve a wrong person in the incident. She will not allow the real culprit to go scot free. In our opinion, the defence has not been able to elicit anything in her cross-examination which would make her an unreliable witness. She has not at all exaggerated the prosecution case. When two sticks were shown to her, she honestly stated that she did not know which stick was in the hands of A-3 and which stick was in the hands of A-4. Slight discrepancy as regards the weapon used by A-1 has been explained by her in her cross-examination. She had stated before the police that A-1 had used a sword. She has clarified that due to inadvertence, she had committed this error. She had wrongly mentioned the word “sword” instead of the word “koyta”. We do not find this discrepancy to be of any significance. Her version of the incident in the examination-in-chief is consistent with that in the cross-examination. If a witness is deposing about an incident, which had taken place about two years back, there are bound to be some inconsequential discrepancies in the narration. We do not find that there are any inconsistencies or discrepancies of material nature in the evidence of this witness.

13. It was argued by Mr. Hudlikar that the conduct of PW-2 Rajashri is unnatural. She has stated that she did not disclose this incident to anyone. Her conduct does not stand to reason and,

therefore, this witness is not telling the truth. We have no hesitation in rejecting this submission. When the incident had taken place in broad day light, there was no question of Rajashri telling all those who were present there about it. PW-8 Mahadev has stated that PW-2 Rajashri was crying. According to him, she narrated the incident to him. Thereafter, the police took both of them to the police station where PW-2 Rajashri gave her complaint. PW-9 Asha has stated that she and her daughter-in-law did not make any enquiry with PW-2 Rajashri. Therefore, if PW-2 Rajashri had not told her anything, it cannot be taken against her. It was argued that PW-2 Rajashri did not even disclose the incident to Babasaheb Patil, the Chairman of the Village Co-operative Society of Kakhe. Assuming that PW-2 Rajashri did not disclose the incident to anyone that by itself would not affect her credibility. After the drastic incident, she must be in a shock. Probably she was too traumatised to narrate the incident to anyone and it is only when her brother-in-law PW-8 Mahadev came there that she disclosed it to him. Besides, the incident had taken place at about 3.45 p.m. on 25/11/1999 and FIR was lodged at 5.50 p.m. i.e. within two hours of the incident. In the FIR, PW-2 Rajashri has named all the four accused and attributed specific roles to them. Immediate lodging of the FIR and mentioning of the names of the accused in the FIR are indeed clinching circumstances against the accused.

14. It was argued that if PW-2 Rajashri was sitting near her husband, who was bleeding, there ought to have been blood stains on her clothes. This argument must also be rejected. PW-2 Rajashri had clarified that she did not intervene in the assault. According to her, she had touched the body of her husband to find out whether he was alive. She has further stated that when she touched the body of her husband, her saree was not stained with blood. She has further stated that after coming to know that her husband had died, she did not lie on his body. Therefore, there is no question of there being any blood stains on her saree. PW-2 Rajashri is a natural witness. There are no infirmities in her evidence. We find PW-2 Rajashri to be a truthful witness.

15. PW-8 Mahadev has confirmed that he and the deceased had given the open space in front of their house to A-2 for running a cycle shop. He has confirmed that PW-2 Rajashri had complained to them that A-2 had used indecent language with her and, therefore, they forced A-2 to leave the open space. He has further confirmed that about eight days prior to the incident, A-1 had dashed his motor cycle against Suraj, the son of the deceased and Suraj had received minor injuries. He has stated that on 25/11/1999, he had gone for work, as usual. At about 4.00 p.m., the driver of Baburao Patil came

there on the motor cycle and told him that the deceased was murdered. Therefore, he went to the scene of offence. He saw the deceased lying in a pool of blood. PW-2 Rajashri was weeping. PW-2 Rajashri told him that the accused had assaulted the deceased. Two to three policemen came there and they took them to Kodoli Police Station and at Kodoli Police Station, PW-2 Rajashri lodged her complaint. This witness has been cross-examined, at length. He has stood firm in the cross-examination. He has denied that there were two parties in their village. He has denied that he, PW-2 Rajashri and Chairman Baburao Patil had manipulated and concocted a false case against the accused. He has denied the suggestion that there are two factions in the village. This witness lends support to the evidence of PW-2 Rajashri. Both have stated that A-2 was asked to leave the open space in front of the house of the deceased where he was running a cycle shop because he had commented on the character of PW-2 Rajashri. The evidence of PW-2 Rajashri and PW-8 Mahadev establishes the motive to commit the crime. The evidence of these witnesses rules out the possibility of the murder having been committed on account of any political rivalry.

16. PW-10 Sunita had accompanied the deceased and PW-2 Rajashri to the weekly bazar on 25/11/1999. She has stated that from the bazar, they returned in a jeep to village Kakhe at about 3.30

p.m. They got down from the jeep at S.T. stand at village Kekhe. She and her mother-in-law proceeded towards their house and PW-2 Rajashri and the deceased were following them. On the way, PW-2 Rajashri and the deceased stopped because the deceased and PW-3 Shivaji wanted to chew tobacco. According to PW-10 Sunita, she and PW-10 Asha went to their house. They had tea in the house. She heard cries from the main road. She went to the main road. There she noticed the dead body of the deceased lying on the road. PW-2 Rajashri was at a little distance from the dead body and she was crying . Though this witness is not an eye-witness, her evidence, to a great extent, supports the prosecution case. She has confirmed that PW-2 Rajashri and the deceased were walking together and on the way they stopped for a while because the deceased and Balasaheb wanted to chew tobacco. The statement made by PW-10 Sunita is inconsonance with the evidence of PW-2 Rajashri that the deceased stopped to chew tobacco. It is true that this witness has said that she and PW-9 Asha enquired with PW-2 Rajashri as to how the incident had happened whereas, PW-9 Asha has said that she did not enquire with PW-2 Rajashri about the incident. This inconsistency in the evidence of PW-9 Asha and PW-10 Sunita is, however, inconsequential. We have already noted that we do not attach much importance to the fact that PW-2 Rajashri did not tell the incident to anyone. Once, the presence of PW-2 Rajashri at the

scene of offence is established and her evidence on the main incident of attack on her husband is found to be credible in the facts of this case whether or not she disclosed the incident to anyone is not important particularly because she has lodged the FIR soon after the incident and has named all the four accused in the FIR.

17. All other witnesses, who were examined to depose about the occurrence have turned hostile and are of no use to the prosecution. However, in our opinion, even if the evidence of the other witnesses is obliterated, the prosecution can succeed only on the basis of the evidence of PW-2 Rajashri, PW-8 Mahadev and PW-10 Sunita.

18. We are not impressed by the submission that the prosecution has not examined any independent witnesses. We have already stated that all the other witnesses have turned hostile. The tendency of the witnesses resiling from their earlier statements is on the rise. We cannot loose sight of the fact that these days it is hard to get independent witnesses to come and depose in the court against the accused. Often they are threatened. As has happened in this case, those who are examined also do not support the prosecution perhaps because of the threats given to them. In such circumstances, we cannot countenance the argument that the prosecution's case must be rejected because independent witnesses have not been examined.

Besides, there is no rule that a conviction cannot be based on the evidence of interested witnesses. If the presence of the interested witness is proved and the interested witness is found to be a natural witness and his evidence is found to be reliable, reliance can be placed on him. This submission of the learned counsel will have to be therefore rejected. Besides, we find that the medical evidence also corroborates PW-2 Rajashri's evidence. By and large the injuries found on the deceased correspond with the blows dealt by the accused to the deceased and the nature of weapons used by them.

19. According to the prosecution, on the clothes of the deceased blood of “B” group was detected. Blood group of none of the accused is “B”. The prosecution case is that blood of “B” group was found on the clothes of the accused and the weapons seized at their instance. But the trial court has rejected this evidence on the ground that PW-13 Hanmant Patil is a pancha to all these relevant panchnamas and, therefore, the seizure of clothes and discovery of weapons do not inspire confidence. Dr. Shaikh, the learned A.P.P. has contended that the evidence of the investigating officer corroborates the evidence of the pancha. There is no evidence to establish that the prosecution was motivated by a desire to falsely implicate the accused. Dr. Shaikh contended that the trial court, therefore, wrongly rejected this evidence. Since, in our opinion, there is sufficient other evidence on

record to sustain the prosecution case, it is not necessary for us to dwell on this evidence.

20. In the ultimate analysis, therefore, we feel that the learned judge has rightly convicted the accused. PW-2 Rajashri is a totally reliable witness. PW-2 Rajashri had disclosed the names of the assailants to the police on the basis of which the crime was registered and the entry (Ex-52) was made. In the entry (Ex-52), the names of all the four assailants are found. Thereafter, an FIR came to be recorded at the police station wherein also names of all the four accused are found. The FIR is also recorded about two hours after the incident. Therefore, the recording of the FIR is prompt. Being the wife of the deceased, PW-2 Rajashri is the most natural witness and, her presence at the scene of offence cannot be doubted. Her presence is proved by cogent evidence of PW-8 Mahadev and PW-10 Sunita. There is hardly any discrepancy in her evidence. Her evidence is very well supported by the evidence of PW-8 Mahadev and PW-10 Sunita. The prosecution has established the motive. All these circumstances conclusively prove the guilt of the accused. In our opinion, therefore, the conviction and the sentence is perfectly justified. No interference is necessary with the impugned judgment and, hence, the appeal is dismissed.

(SMT. RANJANA DESAI, J)

(D.G. KARNIK, J.)